



**The Comptroller General  
of the United States**

Washington, D.C. 20548

ISKIN

## Decision

**Matter of:** Arrow Gear Company  
**File:** B-235081  
**Date:** August 14, 1989

---

### DIGEST

Protest against exclusion due to urgency is sustained where agency approved protester as source but unduly delayed determination regarding need for first article testing.

---

### DECISION

Arrow Gear Company protests the award of a contract to Precision Gear, Inc., under request for proposals (RFP) No. N00383-88-R-3951, issued by the Navy Aviation Supply Office for quantities of 36 spur gears and 118 spur gears, either separately or combined (154 spur gears). Arrow challenges the Navy's determination that only Precision, which has previously manufactured the spur gears, could satisfy the agency's requirement for 118 of the spur gears, the quantity determined to be urgent.

We sustain the protest.

### BACKGROUND

The solicited item is a spur gear, a component of the General Electric T-64 engine, that powers the Sikorsky H-53E helicopter. The item is considered flight critical and can only be procured from approved sources. The gear diverts power from the engine to run certain accessory systems such as the tachometer; according to the agency, without this part the aircraft will be grounded, and if the gear fails in flight, it could possibly result in loss of the aircraft. Precision Gear is one known approved source and long-time supplier of the spur gear to General Electric. In addition, Arrow was granted source approval by the Navy on April 24, 1987, pending successful completion of first article testing, more than 2 years after it had applied to become an approved source.

On April 27, however, the Navy issued a solicitation for 36 gears (RFP No. N00383-87-R-3777) to Precision Gear based on a Justification and Approval (J&A) for other than full and open competition, finding that firm the only known approved source. Upon learning of Arrow's approval, contracting officials also solicited that firm, but Arrow advised it would not compete. As of the closing date, on May 27, proposals were received from Precision Gear and a second firm, Equitable Engineering Company; after reviewing Equitable's qualifications for source approval, however, the Navy notified Equitable in December 1988 that its gear would need to pass an engine test, and that the agency lacked the resources to perform the test.

In the meantime, the Navy concluded that the need for the spur gears had become urgent and, on May 24, 1988, executed a J&A for procuring from Precision Gear, described in the justification as the only approved source, an additional 118 spur gears on a sole source basis, premised on unusual and compelling urgency. Although the statement in the J&A that Precision Gear was the only approved source was incorrect, the agency reports that "it was determined that Arrow Gear would have had to undergo first article approval" because it had not previously produced the gear for the Navy. Pursuant to the J&A, RFP No. N00383-88-R-3951 was issued on July 12 to Precision Gear. Shortly after the July 26 closing date for the new solicitation, however, Arrow requested a copy of the solicitation, objected to having been denied an opportunity to compete, and submitted a proposal under the solicitation.

According to the Navy, as a result of Arrow's interest in the procurement and in order to procure gears at the lowest possible price, it decided in August to combine RFPs -3777 and -3951. In addition, the agency reportedly began a review to determine whether first article testing or production lot testing would be required. In March 1989, a determination was made that Arrow would need to meet both first article and production lot requirements because, although it was an approved source, it had never produced the item for the Navy; since Precision Gear, on the other hand, had produced the item previously, it was decided that first article testing could be waived for it and only production lot tests would be required.

On March 8, the Navy amended RFP -3951 to incorporate the quantity previously solicited under RFP -3777; the amendment established stepladder quantities of 36, 118, and 154 gears. The amendment also requested offerors to provide their best possible delivery and price; it advised that the government required the earliest possible delivery and set out desired

delivery schedule, calling for delivery of first article test samples, if any, within 180 days after contract award, and the production quantity within 345 days if no first article was required and within 510 days if first article was required. The amendment, however, did not advise that first article testing would be required of Arrow, but not of Precision Gear.

Proposals were then received from Arrow and Precision Gear. Precision Gear proposed to meet the suggested delivery schedule in the solicitation of 345 days if no first article was required. Arrow, however, submitted the lowest price for each stepladder quantity, and proposed to deliver all production quantities in 345 days if it had to comply with first article test requirements, by manufacturing its production quantities concurrently with the manufacture of its first article sample. However, in view of the possibility that Arrow might fail first article, and therefore need to remanufacture all production quantities, the Navy evaluated Arrow's proposal based on the assumption that Arrow could not reasonably deliver production articles sooner than 510 days after contract. Further, the contracting officer determined that the Navy's requirement for 118 of the gears was sufficiently urgent that the agency could not accept the assumed 165-day delay in delivery--based on the additional time required for first article--that would result from award to Arrow; he therefore did not consider Arrow for award of the stepladder quantities for 118 and 154 gears. Instead, proposals were evaluated by comparing the cost of a split award (\$61,784.24) of the 36-gear non-urgent requirement to Arrow and the 118-gear urgent requirement to Precision Gear, with the cost of one award (\$55,749) of 154 gears to Precision Gear; as the single award represented the lower cost to the government, award was made on March 29 to Precision Gear for the 154-gear quantity. Arrow thereupon filed this protest with our Office. Contract performance has not been stayed due to a finding that urgent and compelling circumstances significantly affecting the interests of the United States require continued contract performance. 31 U.S.C. § 3553(d) (Supp. IV 1986).

Arrow claims that the award to Precision Gear is improper because its price, with or without first article, was lower than the award price. It argues that any "urgency" that may now exist is only the result of the Navy's having mismanaged the procurement. Moreover, in this regard, Arrow has stated its willingness to undergo first article testing according to the schedule it submitted with its proposal, which was within the Navy's desired delivery schedule. It maintains that the Navy's lack of confidence in the quality of its spur gear is unreasonable since it ha

been providing aircraft gears to a number of major aircraft manufacturers, including General Electric, and to military services other than the Navy for 25 years.

#### ANALYSIS

The record supports, and Arrow does not dispute, the Navy's position that there is a substantial backlog of orders for these parts. The Navy reports that it has no spare gears in inventory and that 56 gears are on backorder, 22 of which are needed for 22 engines that are awaiting repair. In addition, according to the agency, the number of backorders will increase at a rate of 7.75 per quarter and will total approximately 87 in the 345 days allowed for delivery under Precision Gear's contract and proposed by Arrow; the number of engines awaiting repair will increase to approximately 52 during this interval. Arrow also does not dispute that the unavailability of a gear will result in the grounding of an aircraft and that failure of the gear in flight may result in loss of the aircraft. These factors support a determination of unusual and compelling urgency for a sufficient number of gears to resupply the agency's depleted stocks. In these circumstances, and in view of the fact that Arrow has not previously manufactured this part for the Navy, we do not believe that the agency was required to waive first article testing for Arrow, see Discount Machinery & Equipment, Inc., B-231068.2, Jan. 25, 1989, 89-1 CPD ¶ 73, nor obligated to take the risk that Arrow might fail the first article test and therefore be forced to remanufacture the production quantities. See Howmet Corp., B-232421, Nov. 28, 1988, 88-2 CPD ¶ 520.

The record, however, also indicates that the current urgency is largely the result of the Navy's dilatory conduct of this procurement. Award was not made until more than 2 years after issuance of the 1987 solicitation for 36 gears and the granting of source approval to Arrow. In particular, the Navy has not explained why it delayed the procurement for approximately 7 months while assessing the necessity for first article testing when, the record indicates, the agency had already decided twice before--when granting source approval to Arrow and again when issuing RFP -3951 on a sole-source basis to Precision Gear--to require of Arrow a first article test. The consequent delay was significantly greater than the 165-day delay that the agency assumed would have resulted from award to Arrow, and is incompatible with the urgency determination. Had the agency simply followed through on its prior determinations to require first article testing of Arrow and promptly evaluated proposals on that basis, it appears that the agency would have been able to take advantage of Arrow's low cost proposal.

Under the Competition in Contracting Act of 1984, an agency may use noncompetitive procedures to procure goods or services where the agency's need is of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals. 10 U.S.C. § 2304(c)(2) (Supp. IV 1986). Even under such circumstances, however, the agency is required to seek offers from as many potential sources as is practicable. See IMR Systems Corp., B-222465, July 7, 1986, 86-2 CPD ¶ 36. Here, while the Navy did provide Arrow an opportunity to submit a proposal, the agency's dilatory conduct deprived Arrow of a meaningful opportunity to compete for the full quantity of 154 gears. Since this is inconsistent with the agency's obligation when proceeding under the urgency exception to maximize competition to the extent practicable under the circumstances, we sustain the protest. See Data Based Decision, Inc., B-232663, B-232663.2, Jan. 26, 1989, 89-1 CPD ¶ 87; Honeycomb Co. of America, B-227070, Aug. 31, 1987, 87-2 CPD ¶ 209.

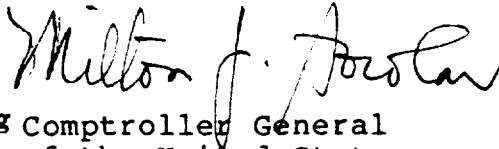
#### RECOMMENDATIONS

Although Arrow has been deprived of a meaningful opportunity to compete, and the government has been deprived of the benefit of the low cost proposal, we recognize that the agency currently has an urgent requirement for spur gears. Nevertheless, it is far from clear that the urgency encompasses the entire quantity of 154 gears awarded to Precision Gear. Rather, it appears that the agency may be able to break out for competition as many as 67 gears; according to the agency, the backorders for the gears will increase to approximately only 87 during the time allowed for delivery under Precision Gear's contract and Arrow's proposal. In this regard, an urgency justification does not support the procurement of more than the minimum quantity needed to satisfy the immediate urgent requirement. See Honeycomb Co. of America, B-227070, supra.

Accordingly, we recommend that the agency review this procurement, determine the number of spur gears for which it actually has a current, urgent requirement, execute a proper J&A for this number, and recompile its requirement as to those gears not urgently needed.

In addition, since the effect of the Navy's actions has been to unreasonably exclude Arrow for consideration for award of the urgent quantity, we find Arrow to be entitled to recover its proposal preparation costs. See generally Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300. We also find Arrow to be entitled to the costs of filing and pursuing this protest. 4 C.F.R. § 21.6(d)(1) (1988); see Sanford & Sons Co., B-231607, Sept. 20, 1988, 88-2 CPD ¶ 266.

The protest is sustained.



Acting Comptroller General  
of the United States